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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/633,368

Filing Date: July 31, 2003

Appellant(s): LAYTON ET AL.

Edward S. Wright
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/20/08 appealing from the Office action mailed 11/20/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The applicant has stated that there has been no amendments after the Appeal. The examiner agrees with this statement, but the Appeal Brief is silent as to addressing the Amendments after Final. See Below:

The amendment after final rejection filed on 1/18/08 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6498719	BRIDGES	12-2002
5760998	BERBERICH et al.	06-1998
2003/0035271	LELONG et al.	02-2003

(9) Grounds of Rejection

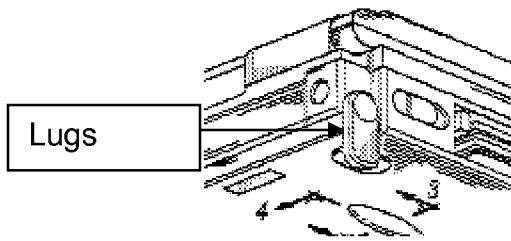
The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1, 5, 7-9, 19-21, 23 and 32-35 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6498719 to Bridges.

Bridges discloses a housing (10) formed of rigid polymeric material (See Col. 2 line 56) to which a fragile element (circuit boards in computer) is rigidly mounted and a plurality of discrete shock absorbing elements (32, 22, 24) projecting outwardly in different directions from the housing with some of the shock absorbing elements (22) being made from the same rigid polymeric material as the housing (See Col. 6, claim 12 for polymeric material), wherein some of the shock absorbing elements (22) are tapered and decrease in cross sectional area away from the housing and wherein some of the shock absorbing elements (22) extend beyond a mounting surface of the housing and are adapted to deflect, the shock absorbers including a generally circular mounting pad (32)

which extends beyond a surface of the mounting pad and a generally c-shaped fender (22) which has a lug (See Drawing) integrally formed with the housing, the pad and fender being laterally spaced with a gap between pad and fender, wherein the fender extends around and are spaced from corner portions of the housing and the lugs extend beyond a side of the housing bounded by the corners.



Claims 10-12, 14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5760998 to Berberich et al.

The patent to Berberich et al. discloses a shock-resistant enclosure (14') having housing with a base (62) and a cover section (14), and a combined sealing gasket (82) and shock absorbing structure (86, 42, 80) formed integrally of an elastomeric material (See Abstract for material) with a generally planar sealing portion (see 44 for illustration of sealing portion) disposed between the base and cover sections of the housing and a plurality of discrete shock absorbing elements (86, 42, 80) extending outwardly from the sealing portion and projecting from different sides of the housing with at one of the elements (80) projecting from the housing in a direction substantially perpendicular to the plane of the sealing portion, wherein the shock absorbing elements are connected to

the sealing portion by runners (44, 46', numbers used for illustration, it is recognized that the embodiment in Figure 11 has a similar sealing gasket structure) which are embedded in the walls of the housing and in recesses (See Figure 1 for recesses) near the corners of the housing and held in place by corner pieces retained by fasteners (See Figure 1) that also hold the base and cover sections of the housing together, wherein the shock absorbing members (86) are tapered and decrease in cross-sectional area away from the housing, the shock absorbers which formed integrally to the housing and include a mounting pad (80) and a fender (86) which are spaced laterally from the mounting pad.

Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Publication No. 2003/0035271 to Lelong et al.

The publication to Lelong et al. teaches a shock resistant enclosure having a housing (10) to which a fragile element (Hard Disc Drive) is rigidly mounted, and a plurality of leaf springs (38) formed integrally with and extending from the housing, overlying one side of the housing.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6498719 to Bridges and in view of United States Patent No. 5760998 to Berberich et al.

The basic inventive concept is taught by Bridges, including teaching that shock absorbing members (24) are resilient (See Col. 3, line 2). Bridges does not specifically teach that the resilient material is an elastomeric material.

Berberich et al. teaches a housing (14') resilient shock absorbers (80) that are made from elastomeric material (See Col. 9, line 45), used for its resilient properties. Therefore, it would have been obvious to one of ordinary skill in the art to have used an elastomer as a resilient material, in order to have the desired resilient properties and that the use of which is a predictable result. (See KSR v. Teleflex, 550 U.S., 127 S. Ct. 1727 (2007)).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6498719 to Bridges as applied to claim 19.

Bridges teaches the basic inventive concept including teaching that the housing and the fender are made from plastic.

Although Bridges does not specifically teach that the mounting pad is also made from plastic, it would be obvious to one of ordinary skill in the art to have made the fender in this manner because plastic is an obvious material choice

which was well known in the art at the time of the invention and the substitution of such has a predictable result. (See *KSR v. Teleflex*, 550 U.S., 127 S. Ct. 1727 (2007)).

(10) Response to Argument

A. Claims 1, 5, 7-9, 19-21, 23 and 32-35 are properly rejected under 35 USC 102 in view of United States Patent No. 6498719 to Bridges.

1. As required by Claim 1, the patent to Bridges discloses that the shock absorbing element project outwardly in different directions from the housing.

With reference to claim 1, the applicant has argued that the Bridges reference does not show a plurality of discrete shock absorbing elements that project in different directions from the housing. The applicant recites that the shock absorbing elements (32, 22 and 24) all extend in the same direction (See Appeal Brief, page 3, lines 12-14). This argument is not persuasive because it mischaracterizes how the rejection defines the shock absorbing elements by limiting the shock absorbers to only those elements listed by reference numeral as shown above. The rejection clearly shows "more" shock absorbing elements than those listed by reference numeral reciting "the shock absorbers including a generally circular mounting pad...having a lug" (See Final Rejection, dated 11/20/07, page 2, line 20 and page 3, line 1). Since the lug shock absorbers do not have a reference numeral, the shock absorbing elements were shown by the insertion of a marked drawing to clearly describe these shock absorbing

elements. As shown in the marked drawing (See Above), these shock absorbing elements have a thickness that extends laterally from the housing, which therefore qualifies as a different direction than the downwardly extending shock absorbing elements depicted by reference numerals (32, 22 and 24). Therefore, the limitation is met by the reference.

2. At least one of the shock absorbers is made from the same material as the housing.

With regards to claim 1, the applicant has also argued that “Bridges likewise fails to show at least some of the shock absorbing elements being formed integrally with the housing and of the same material as the housing” (See AB page 3, line 16 and 17). The applicant further states that no shock absorber is made from polycarbonate.

The rejection is proper because the both the housing (10) and a shock absorbing element (22) are made from polymeric material (See Col. 2, line 57) and Claim 12, line 3). Both elements being made of a polymer qualifies them being the same material just as two items can be said to be of the same material when they are both made of “metal”. Whether or not variations amongst polymers would be defined as “different” material is not clearly spelled out by the applicant's specification, nor is it specified by the applicant's claim and cannot be read into the interpretation. In addition, the Bridges only suggest that “polycarbonate” could be used and seems to leave open the possibility of any feasible polymer. Therefore, it is clear that the limitation is met by the reference.

Further more, integral is defined as essential or necessary for completeness. Shock absorbing element 22 is clearly part of the larger unit and essential to its completeness, therefore meeting this portion of the limitation as well.

3. Shock Absorbing elements 22 and 26 have been properly defined as shock absorbing elements.

The applicant has argued that "elements 22 and 26 are not separate shock absorbing elements, but rather parts of an assembly referred to Bridges as a "strike zone" for reducing the adverse effects of flat slap impacts" (See AB page 3, paragraph 4).

This is not persuasive in that a shock absorbing element can be defined as any device that is designed to absorb some stress or impact an object. Objects that are designed for reducing slap impacts in a strike zone, clearly meet this defined purpose.

The applicant has further argued that element 22 is intended to be used as a "cover" and therefore it does not qualify as a shock absorber.

Element 22 is clearly designed to absorb shock as shown above, but even if element 22 was not intended for use as a shock absorber, it is still properly defined as a shock absorber. Shock absorbing elements not specifically designed for shock absorbing, can still serve that purpose. For example, a pencil which has a resilient eraser at one end is dropped from a table and lands on the resilient eraser end of the pencil. Even though the eraser was designed for

erasing and not impact reducing, the laws of nature require that when the eraser is introduced to an impact force, the eraser will absorb at least some of that impact force. Therefore, whether element 22 was initially intended as a shock absorbing device, has no bearing on its shock absorbing capabilities, Element 22 will still absorb some impact when introduced to an impact force and therefore it has been properly defined as being an absorber of shock.

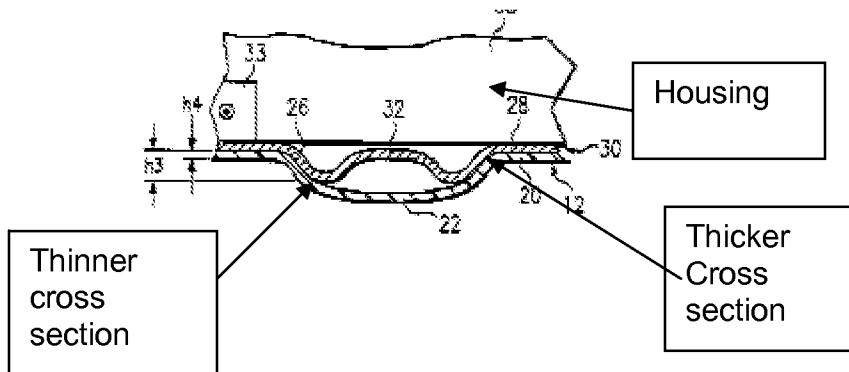
4. A rigidly mounted fragile element is taught inherently by the Bridges reference.

With regards to claim 1, the applicant has argued that "there is no fragile element rigidly mounted to a housing" (See AB page 4 paragraph 1).

The fragile element is taught by the reference in that the device which is housed in the housing is a portable computer. (See Abstract, line 1) In the specification, Bridges teaches, "Electronic devices such as portable computers...typically have relatively expensive impact-sensitive components that must be protected from harmful mechanical vibration and shock". (See Col. 1 line 11-14). The term "impact-sensitive components" is synonymous with the term "fragile", therefore teaching the "fragile element". It is inherent in this teaching that these fragile components are rigidly mounted to the inside of the housing that protects them, otherwise the housing would not be capable of reducing the impact to these fragile components. If the components were not mounted to the housing they would fall around on the inside and the outer

protection would be meaningless. Therefore, this limitation is met by the rejection.

5. With regards to claim 5, shock absorbing element 22 is tapered and decreases in cross section away from the housing. It is evident that element 22 is thicker in cross section near the housing and tapers in cross section away from the housing.



6. With regards to claims 7-19, 19, 20, 21, 23, 32, 33, 34 and 35, all of the claim limitations are met because the rejection meets all of the claim limitations.

The applicant has argued that various elements of the claims are not met such as the list below:

a. that the mounting surface is not a mounting surface because it does not contact the desktop on which a computer is placed (page 4 paragraph 5).

A mounting surface is not limited to contacting a surface unless specifically specified by the claim. The rejection teaches a mounting surface in that it could be any surface.

b. that bridges does not recite a mounting pad which projects from the housing and a shock absorbing fender spaced laterally from the mounting pad with a gap between mounting pad and fender. (page 4, paragraph 5)

The rejection teaches these elements, see above in Grounds of Rejection.

c. that the fender a pad are not formed integrally with the housing (page 5, lines paragraph 2)

See the discussion above on the term "integral".

B. Claims 10-12, 14, 17 and 18 are properly rejected under 35 USC 102
in view of United States Patent No. 5760998 to Berberich et al.

7. The Berberich et al. reference teaches two embodiments with similar and interchangeable structures.

The applicant has argued that the rejection under claim 10 in view of Berberich is not proper because the "Examiner is improperly combining elements from two different embodiments in Berberich et al." (See Appeal Brief page 7, paragraph 1).

The rejection is based on the second embodiment in Figures 10 and 11 which depicts a similar gasket (82) to the first embodiment, depicted by Figures 103 gasket (40). In the interest of brevity, not all of the pieces of the second embodiment are referred to by reference numerals. (See col. 9. line 33-34) So even though the rejection uses reference numerals from the first embodiment, it is not done so improperly, but is used in order to show detail that is not shown twice.

8. With regards to claim 12, the runners are shown to be embedded in recess near corners of the housing and held in place by corner piece fasteners.

The Berberich et al. reference teaches shown illustratively by 44 and 46' which are embedded between the walls of the housing near the corner of the housing and held in place by corner pieces or fasteners as shown by the rejection above.

C. Claims 24 and 25 are properly rejected under 35 USC 102 in view of United States Patent Publication No. 200//0035271 to Lelong et al.

9. With regards to claim 24, the Publication to Lelong et al. teaches the housing with a plurality of leaf springs integrally formed and extending outward.

In response to applicant's argument that the leaf springs are not for receiving impact, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the present situation the leaf springs clearly are extending from the housing which meets the structural limitations. As discussed above, they do not have to be intended for the purpose of receiving an impact to actually be capable of receiving that impact.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time

Art Unit: 3600

to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Amy J. Sterling/
Primary Examiner, Art Unit 3632
4/2/08

Conferees:

Meredith Petrvick /mcp/
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